

THE following DOCUMENTS are submitted in support of the claim of the Chief Justice of the Superior Court for the Province of Canada, to be paid the difference between £1,000 and £1,200, per annum, as established by the Statutes 9 Victoria, chapter 114, and 14 and 15 Victoria, chapter 173, he having been hitherto paid the salary of a Puisné Judge only.

SECRETARY'S OFFICE,

MONTREAL, 24th October, 1849.

SIR,—The Governor General, in order to meet, in so far as it lays in His power, your wishes, as expressed in your letter of the 13th August last, wherein you state that your removal to Montreal as Puisné Judge of the Court of Queen's Bench, under the 12 Victoria, chapter 37, would be in your case extremely difficult and onerous, has commanded me to offer for your acceptance the office of Chief Justice of the Superior Court, under the 12 Victoria, chapter 38, which will not put you to the necessity of removing to Montreal.

I am further commanded to add that the salary attached to that office will be £1,000, Currency, per annum.

I have the honor to be,

Sir,

Your most obedient servant.

JAMES LESLIE,
Secretary.

The Honble. Mr. Justice Bowen,
&c., &c., &c.
Quebec.

QUEBEC, 26th October, 1849.

The Honble. James Leslie,
Provincial Secretary,
Montreal.

SIR,—I have the honor to acknowledge the receipt of your letter, dated the 24th instant, in which you communicate by command of His Excellency the Governor General that he has been pleased to desire you to offer, for my acceptance, the office of Chief Justice of the

Superior Court, under the 12 Victoria, chapter 38, which will not put me to the necessity of removing to Montreal, and which in my letter of the 13th August last, I then stated would be extremely difficult and onerous to me; I have also to request you will be pleased to express my sincere acknowledgements to His Excellency and my willing acceptance of the office upon the terms as stated.

At same time trust I may not be considered unreasonable or mercenary if, after having served for a period exceeding forty years, first as Attorney General, and thirty-eight years as a Judge in the highest Courts of the Province, I venture, in consideration of the arduous and highly responsible duty which will devolve upon me as such Chief Justice, to assert my claim to receive a salary greater in amount than the Puisné Judges of the same Court, and such as has always been attached to the Office of Chief Justice at Montreal, inferior much in amount to that of the Chief Justice of the Province, though possibly in no wise inferior in point of duty and responsibility. The mere title of Chief Justice will necessarily entail additional demands and expenses upon the person holding that office. I may refer with confidence to my memorials of record in the office of the Governor's Secretary, to show that not less than three of the Secretaries of State for the colonies have considered me as entitled to remuneration for the loss of the Office of French Translator to Government in 1825, an office conferred on me to compensate, though in a very trifling degree, for the loss of that of Attorney General, under circumstances which it is not necessary here to repeat, the which compensation has never been made to me, relying therefore with entire confidence upon the wisdom and justice of His Excellency, I trust he will be pleased to cause the office to be maintained on that footing of respectability in point of emolument which has hitherto been invariably observed.

I have the honor to subscribe myself,

Sir,

Your most obedient servant,

EDWARD BOWEN.

SECRETARY'S OFFICE,

TORONTO, 12th December, 1849.

SIR,—I have the honor, by command of the Governor General, to inform you that the 24th of the present month having been fixed and appointed by His Excellency in Council as the day upon which the recent Judicature Acts are to take effect, the requisite Proclamations

have been issued and instructions given for the preparation accordingly of your commission as Chief Justice of the Superior Court, under the 12 Victoria, chapter, 38.

I have the honor to be,

Sir,

Your most obedient servant,

J. LESLIE,

Secretary.

The Honorable Mr. Justice Bowen,

&c., &c., &c.

SECRETARY'S OFFICE,

TORONTO, 24th December, 1849.

SIR,—I have the honor to transmit to you, by command of the Governor General, Her Majesty's Commission under the great seal of this Province, appointing you Chief Justice of the Superior Court, under the 12 Victoria, chapter 38; and I am further commanded by His Excellency to add that your residence under your present commission is to be in Quebec, as understood at the time the office was tendered by His Excellency for your acceptance and was accepted by you.

His Excellency commands me also to inform you that the subject of the circuit allowance heretofore made to the Judges to defray their travelling expenses, has for some time back engaged the attention of the Government, and that it is probable that the subject may be brought before Parliament at its next session.

During the incumbency of the Honorable Mr. Justice Rolland, as Judge of the Queen's Bench for Lower Canada, your salary as Chief Justice of the Superior Court will be £1,000 as heretofore.

You will be good enough to acknowledge the receipt of this letter and enclosure at your earliest convenience.

I have the honor to be,

Sir,

Your most obedient servant,

J. LESLIE,

Secretary.

The Honorable E. Bowen,

Chief Justice of the Superior Court,

&c., &c., &c.

To His Excellency the Right Honorable James Earl of Elgin and Kincardine, Governor General of British North America, &c., &c., &c.

The Memorial of Edward Bowen, of the City of Quebec, Chief Justice of the Superior Court for that part of the Province of Canada called Lower Canada.

MOST RESPECTFULLY SHEWETH,

That your Excellency's Memorialist is now in the *Thirty-ninth* year of his professional service as one of Her Majesty's Judges, having during that period sat in the different Courts of Law, exercising as well Civil as Criminal Jurisprudence in Lower Canada, also in the Court of Appeals in quality of an Executive Councillor, and subsequently in the same Court as a Judge in Appeal, in virtue of the Statute 17 Victoria, chapter 18, he being *now the oldest Judge* not only of *this Province* but of any part of Her Majesty's very *extended dominions*.

That your Excellency's Memorialist when offered the Office, which he has now the honor to hold, was under the not unreasonable expectation that the same salary, heretofore enjoyed by the several Chief Justices who preceded him, would as a matter of right have been allowed him, the office requiring and necessarily involving a greater expenditure, in a pecuniary point of view, than that of a Puisné Judge, and also a very much higher responsibility.

That being much advanced in years and possessing a large family wholly unprovided for, the additional pay of £250 per annum, which, in the course of nature, cannot long be claimed, could not be felt as a burthen to the Province, and may with great justice be claimed as a matter of strict right.

That in the last Session of the Provincial Parliament, an Act, the 12 Victoria, chapter 63, was passed, whereby the salaries of the Judges in that part of the Province called Upper Canada, were secured to them, with retiring Pensions after fifteen years' service, as in England; additional Courts created, and amongst other the provisions of the said Act, a Chief Justice for the *New Court of Common Pleas* was appointed with a salary *corresponding* in amount to that *now claimed* by Your Excellency's Memorialist, and such as had been always paid to his predecessors in office.

That by an Act passed in the *Imperial Parliament*, the 4th and 5th William IV, chapter 24, retiring Pensions were established for all the *Ordinary Civil Officers* of the Government upon a graduated scale from 10 years to 50 years' service, at which last period, they were enti-

tled to retire upon the full pay of the Office, they then enjoyed whatever might be its amount, and those from 40 and under 45 years' service, 10-12ths of their pay.

That as a Judge under the precedent so established for Upper Canada, your Excellency's Memorialist might have claimed his retirement at the expiration of 15 years, but having now served Government forty-two years, first as Attorney General and subsequently as Judge, should he claim such retirement, it could not with reason be refused, in which case the necessary expense to the Province instead of £250 now sought for, would be from £1,600 to £1,800 per annum, but which retirement, owing to the expenses incident to a large family, he is unable to claim.

That Your Excellency may be pleased therefore to take this Memorial into your favorable consideration, and to do thereon what may seem right and fitting in the permises, is the prayer of

Your Excellency's most obedient humble servant,

EDWARD BOWEN.

Quebec, 15th June, 1850.

SECRETARY'S OFFICE,

TORONTO, 14th October, 1850.

SIR,—In reply to your Memorial of the 15th June last, transmitted by the Honorable Mr. Morin, praying that an increase of £250 might be made to your salary as Chief Justice of the Superior Court in Lower Canada, I have the honor, by command of the Governor General, to refer you to my letter of the 24th October last, in which it is expressly mentioned that your salary had been fixed at £1,000; and I am to state that His Excellency regrets that he cannot entertain your application favorably.

I have the honor to be,

Sir,

Your most obedient servant,

J. LESLIE,

Secretary.

The Honorable Mr. Chief Justice Bowen,

&c., &c., &c.

N. B.—At the above date, the Statute 14 and 15 Victoria, chapter 173, which fixed the salary of the Chief Justice of the Superior Court at £1,200, had not been passed.

The Honorable Francis Hincks,
Inspector General, &c., &c., &c.

QUEBEC, 30th April, 1853.

SIR,—I have to request that you will call the attention of His Excellency the Governor General, to the fact that the salary hitherto paid to me as Chief Justice of the Superior Court for Lower Canada, has been less by £200, Currency, per annum, than that provided by Law for an incumbent of that office, appointed as I was previous to the 10th August, 1850.

Until very recently it entirely escaped my own notice that such was the case, otherwise, I should have felt it my duty to call His Excellency's attention to the fact at an earlier period.

By the Civil List Act of 1846, (9 Victoria, chapter 114,) it was provided, that the salary of any future Chief Justice of Montreal or of Quebec, as the case may be, should be £1,200, Currency.

On the 24th December, 1849, I was appointed to the office of Chief Justice of the Superior Court for Lower Canada, created by 12 Victoria, chapter 38, which abolished the then existing Courts of Queen's Bench in Lower Canada, without any provision having been made by Law for the payment of my salary as such.

I now perceive, however, that the Act 14 and 15 Victoria, chapter 173, intituled, "An Act to amend the Act for granting a Civil List to "Her Majesty," while it provides that the salary of a Chief Justice of the Superior Court for Lower Canada, *appointed after the 10th August, 1850*, shall not exceed £900, contains a declaration to the effect, that the Chief Justice *of that Court*, shall be the *Functionary*, whose salary shall be payable under the Act 9 Victoria, chapter 114, *instead of the Chief Justice* of Quebec or Montreal therein mentioned.

The words of the clause are those :

The salary of any Chief Justice, &c.

The salary legally payable to me therefore, in virtue of my appointment on the 24th December, 1849, to the office I have now the honor to hold, has been that indicated in the second column of Schedule A, to 9 Victoria, chapter 114, as that of the "Chief Justice of Montreal or Quebec, as the case may be," appointed subsequently to the passing of that Act, that is to say, £1,200, Currency, per annum, instead of £1,000, Currency, *only*, which *I have received*.

You will oblige me by conveying to His Excellency my respectful request, that he will direct payment to be made to me of the sum

required to complete my salary to the above amount of £1,200, Currency, per annum, during the time I have held the office in question.

I have the honor to be,

Sir,

Your most obedient servant,

EDWARD BOWEN.

SECRETARY'S OFFICE,

QUEBEC, 7th November, 1853.

SIR,—His Excellency the Administrator of the Government having given his attentive consideration in Council to your application, submitting a claim for the difference of £200 per annum, between your present salary of £1,000, and that to which you conceive yourself entitled under the Civil List Act, 9 Victoria, chapter 114, and 15 Victoria, chapter 173, amending the said Act, I have received His Excellency's commands to inform you in reply, that he has not been advised to entertain your claim.

I have the honor to be,

Sir,

Your most obedient servant,

J. O. CHAUVEAU,

Secretary.

The Honorable Mr. Chief Justice Bowen,

&c., &c., &c.

(No. 294.)

INSPECTOR GENERAL'S OFFICE,

QUEBEC, 18th November, 1853.

SIR,—I have the honor to inform you that your letter addressed to me, bearing date 30th April last, setting forth that the salary hitherto paid you as Chief Justice of the Superior Court for Lower Canada, has been less by £200, Currency, per annum, than that provided by law for an incumbent of that office appointed as you were, previous to the 10th August, 1850, having been referred to the consideration of the Law Officers of the Crown, His Excellency the Administrator of the Government has been advised by a Report, signed by the Attorneys General for Lower and Upper Canada, and by the Solicitor General for Lower Canada, that following the passing of the Acts 12 Victoria, chapter 37, 38 and 40, which materially altered the system of Judicature in Lower Canada, but which contain no reference to the salaries of the Judges, a correspondence took place between you and the Honorable

Executive Government, by which it appears that on the 24th October, 1849, the office of Chief Justice of the Superior Court under the Act 12 Victoria, chapter 58, was tendered for your acceptance, and that at the same time it was expressly stated to you that the salary intended to be attached to such office was £1,000; that in your letter in reply, bearing date 26th October, 1849, you express your willing acceptance of the office upon the terms as stated, that the salaries of the Judges of the Court of Queen's Bench, and of the Superior Court of Lower Canada, being undetermined by any special legislative enactment, an order was made by His Excellency the Governor General in Council, on the 24th December, 1849, fixing the salaries of Judges of this Court in which Order it is stated;—the salary of Chief Justice Bowen to be £1,000, Currency, per annum, *during the incumbency of Mr. Justice Rolland*, and on the death or resignation of the latter Judge, the salary of the Chief Justice of the Superior Court to be £1,250 per annum."

That the Act 14 and 15 Victoria, chapter 173, upon a part of the first section of which you rest your claim, was passed for the express purpose of reducing the salaries of all the High Executive and Judicial Functionaries of Canada, except those who had been appointed *before the 10th August*, 1850; that the particular words cited by you, viz: "and the Chief Justices of the said Courts shall be the Functionaries whose salaries shall be payable under the said Act, instead of the Chief Justice of Lower Canada and the Chief Justice of Quebec or Montreal therein mentioned," cannot properly be interpreted in your favor.

Firstly. Because it is evident that these words were used for the purpose of designating the Functionaries who would receive the reduced allowance, viz: the Chief Justice to be appointed after the 10th August, 1850, and that they do not apply to those Judges who were appointed previous to that date, and of whom no mention is made in the Statute.

Secondly. Because the salaries referred to in this enactment are not those which were payable under the Civil List Act as it originally stood, but as it was amended by the Statute now under consideration.

Thirdly. Because the manifest intention of the Legislature in passing this Act would be defeated, by making it instrumental to increase the salaries of the very Functionaries for the reduction of whose emoluments, and for no other purpose it was passed.

Fourthly. Because any doubt which could have arisen as to the interpretation to be put upon these words has been removed by the sanction which the Legislature has given to the annual payment of £1,000 made to the Chief Justice Bowen, in every session which has taken

place since his appointment, as well since as before the passing of the Act referred to.

I have only to add that the Report of which the above is the substance, has induced a decision on the part of His Excellency the Administrator of the Government in Council, unfavorable to your claim as you have, I presume, been already informed by the Honorable Provincial Secretary.

I have the honor to be,

Sir,

Your most obedient servant,

F. HINCKS,

Inspector General.

To the Honorable Mr. Justice Bowen,

&c., &c., &c.

MEMORANDA.

In 1840 was passed } By this, the Imperial Act for reuniting the Pro-
3 and 4 Vict., chap. } vinces of Upper and Lower Canada, the salaries
35, Imperial Act. } of the Judges in Lower Canada were fixed at the
same amount as they were then in the receipt of, namely:

1 Chief Justice at Quebec, (i. e. Chief Justice of the
Province.) £1,500 Stg.
1 Chief Justice at Montreal, (i. e. Chief Justice of that
District,) 1,100 "

1846, 9 Vict., chap. } By this Provincial Act, a *New Civil List*, in
114. } lieu of the foregoing, was established, not how-
ever to affect the then present incumbents, it being enacted that the
sum set down in the *first column* opposite to each office or department
in the Schedules A and B, shall be payable for each, while the pre-
sent incumbents shall respectively remain in office, and that as often
as any such present incumbents shall cease to hold such office, the
sums respectively mentioned in the *first column*, shall cease to be
payable, and the sums mentioned in the *second column*, shall, as each
arrives, be payable as in the Schedule mentioned, i. e.

1 Chief Justice, Lower Canada, £1,250 Cy.
1 Chief Justice of Quebec or Montreal, as the case may be, 1,200 "

1849, 12 Vict., ch. } By these Statutes, a new organisation of the
37 and 38. } Courts in Lower Canada, (and by other Statutes,
passed in the same session for Upper Canada also,) took place, where-
by a Court of Queen's Bench, for Lower Canada, holding Criminal
Pleas, with likewise an Appellate Jurisdiction; and a Superior

Court for the entire Province of Lower Canada, having original jurisdiction in civil matters, being created, thereby did away with the several *District Courts of Queen's Bench* heretofore existing, and consequently with the *Office of Chief Justice for the District of Montreal*; yet, strange to say, in these Acts *no provision* whatever as to salary was to be found for these newly created offices, and hence the *necessity* of the order in Council of the 24th December, 1849, which order, though *proper at the time*, must necessarily have *ceased* to be in force or have any vitality *from the moment* the Legislature saw fit to remedy the omission, which it subsequently did in 1851, by the Statute 14 and 15 Victoria, chapter 173.

By this order in Council, it was directed that Mr. Justice Rolland, who had ceased to be Chief Justice of the *District Court*, and by his own choice, became a Puisné Judge of the New Court of Queen's Bench, should receive the salary of £1,250 per annum, his associate Puisné Judges continuing to receive £1,000 only; and as to the Chief Justice of the *Superior Court*, it was by the said order directed that his salary should be £1,000 per annum, *during the incumbency* of Mr. Justice Rolland, and on the *death or resignation* of the latter Judge, the salary of the Chief Justice of the Superior Court to be £1,250 per annum.

The propriety of such an apportionment of salaries, however meritorious the previous services of Mr. Justice Rolland might have been, may very well be questioned, as opening a door for the invidious remark that an apparent preference has thus been shewn to one class of Her Majesty's subjects over that of another, the former Judge still receiving the salary so apportioned to him, notwithstanding the Statute in question.

1849, In same session, 12 Vict., chapter 63. } By this Act, the organisation of the Courts in Upper Canada was also changed, a New Court for Civil Pleas, to be called the Court of Common Pleas was created, and to the Judges thereof, and also of the several other Courts in that part of the Province of Canada, fixed salaries were assigned, and to the Chief Justice of the Court of Common Pleas, £1,250.

1851, 14 and 15 Vict., chap. 173. } By this Act, entitled, "An Act to amend the "ty," (12 Victoria, chapter 114,) provision is made for the salaries of the Judges in Lower Canada, it being thereby declared that the salary of every Chief Justice of the Court of Queen's Bench, or of the Superior Court, *named after the day* therein last above mentioned, (10th August, 1850,) or who shall be named hereinafter, shall not

exceed the sum of £900, Currency, per annum, and the Chief Justices of the *said Courts* shall be the Functionaries, whose salaries shall be payable in virtue of the said Act, instead of the Chief Justice of Lower Canada, and of the Chief Justice of Quebec or Montreal therein mentioned. (a)

QUEBEC, 29th November, 1853.

SIR,—I have the honor to acknowledge receipt of your letter of the 18th November instant, in reply to mine of the 30th April last, in which you state that His Excellency the Administrator of the Government has been guided by a Report of the Law Officers of the Crown, the substance of which is embodied in your letter, to a decision in Council, unfavorable to my view of the legal effect of certain enactments in the Provincial Statutes, 9 Victoria, chapter 114, and 14 and 15 Victoria, chapter 173, in relation to my salary as Chief Justice of the Superior Court for Lower Canada.

It is as far from being my wish as it would be inconsistent with the position I have the honor to hold, to become or even appear to be a suitor to His Excellency, for an increase of salary or *other favor*; but having submitted to His Excellency, in my letter to you of the 30th April last, briefly, the grounds on which my conclusion was based, that the full amount of the salary *legally* due to me, *has not been paid*, and seeing nothing in the statements of the Crown Officers to induce me to alter my deliberate opinion on the subject, I think it due to myself, as well as to His Excellency, to point out to him what I conceive to be the erroneous nature of the statements and arguments upon which the Reports of those learned gentlemen is founded.

The first argument of the Crown Law Officers is based upon my "willing acceptance" of the Office of Chief Justice, at a salary of £1,000 per annum, (the same salary I then enjoyed as Puisné Judge). My answer to this is, that inasmuch as the Court, of which I was then a Judge, had been abolished by Act of Parliament, and, as the learned gentlemen themselves admit, there existed no legal provision for the salaries of the Judges of the Court created in its stead, I therefore found myself in a position of absolute dependence upon the Will and Pleasure of the Government, for an appointment *to any office* whatever, and might well be expected to accept with pleasure that of

(a) No other Act was in force relating to the Civil List than the 9 Victoria, chapter 114, Schedule A, when the amending Act was passed, and the commission of the Chief Justice of the Superior Court, bearing date 24th December, 1849, is consequently prior to the 10th August, 1850, and can admit of no doubt as to his right under the foregoing enactments.

Chief Justice of the Superior Court, on almost any terms as to salary, nevertheless, my letter of acceptance of the 26th October, 1849, contains an *unequivocal claim to be paid the salary of a Chief Justice.*

Since that time the Legislature, however, has repaired the oversight, by declaring the constitutional protection to the independence of "One Chief Justice of Montreal or of Quebec, as the case may be," secured by 9 Victoria, chapter 114, available to the Chief Justice of the Superior Court of Lower Canada, appointed *before* the 10th August, 1850, and I have the right to claim the benefit of that declaration.

The next argument is that the Act 14 and 15 Victoria, chapter 173, was passed for the express purpose of reducing the salaries of all the High Executive and Judicial Functionaries of Canada, *except those who had been appointed before* the 10th August, 1850, how this argument can be supposed to support a conclusion adverse to my claim, I am at a loss to conceive, *inasmuch* as the date of my appointment, 24th December, 1849, gives me the *benefit* of the *exception*, instead of leaving me to the operation of the rule, both which I admit to have been correctly stated.

It is next said, the "particular words" of the Act 14 and 15 Victoria, chapter 173, which *I have cited*, cannot properly be interpreted in my favor, for *four* several reasons, which I will proceed to examine and answer, as they are given, *seriatim* : premising, however, that the words I am represented as having cited *particularly*, are not contained at all in my letter, and from only the latter half of the clause of which I have quoted the first few words, referring to the remainder by *an* &c.

I rely of course not upon particular words, but upon the *whole* of the clause, taken, as it ought to be taken, in its true spirit and meaning, which are *unmistakeable*, and in its connection with the rest of the Act of which it forms a part.

The *first* reason given is :

"Because it is evident that these words were used for the purpose
" of designating the Functionaries, who would receive the reduced
" allowance, viz : The Chief Justice *to be appointed* after the 10th
" August, 1850, and that they do not apply to those Judges who were
" appointed previous to that date, and of whom no mention is made
" in the Statute."

In reply to this, I need only refer to the clause itself, on perusal of which it will clearly appear that the reduced salaries will be payable to the Chief Justice *appointed after 10th August, 1850*, under the Act in which it is contained, and that therefore it *must* be those appointed

before that date whose salaries are made payable under the said Act, 9 Victoria, chapter 114. The effect of the construction now sought to be put upon the *latter half of the clause*, would be to make it contradict the *former half*, and if extended, as it necessarily must be to the similarly worded portions of the section, to do away with *all legal authority* for the payment not only of my salary, but also of that of the late Chief Justice of Lower Canada; the present Chancellor of Upper Canada, and the Puisné Judges of the Superior Court for Lower Canada, appointed before 10th August, 1850, to all of which Officers it appears to me to have been the object of the Act to extend retrospectively, as well as prospectively, the protection of the Act 9 Victoria, chapter 114.

The *second* reason given is :

" Because the salaries referred to in this enactment are not those which were payable under the Civil List Act, as it originally stood, but as it was amended by the Statue now under consideration."

This reason is only a corollary from the former. It is, however, suggestive of two remarks upon the words quoted by the Crown Law Officers.

Firstly. That they name the Chief Justices of the said Courts generally, whereas the previous words referred to *Chief Justices to be appointed after a certain date only*; so that if they relate to these *at all*, they cannot relate to *them exclusively*.

Secondly. That they refer to the said Act (9 Victoria, chapter 114,) purely and simply, and not to "the said Act as amended by this Act," which it would be absolutely necessary that they should do, in order to sustain in the least the construction put upon them by the learned gentlemen.

The *third* reason given is :

" Because the manifest intention of the Legislature in passing this Act would be defeated, by making it instrumental to increase the salaries of the very Functionaries for the *reduction* of whose emoluments, and for no other purpose it was passed."

How this objection can possibly be brought to bear upon the interpretation put by me upon the clause under consideration, I am utterly at a loss to conceive, unless indeed it be taken to mean that inasmuch as there was no legal provision for the salaries of the Chief Justices and Judges in office at the time of the passing of the Act, it cannot, consistently with the purpose for which it *was* passed, be construed so as to make such provision.

The *fourth* reason given is :

" Because any doubt which could have arisen as to the interpretation to be put upon these words, has been removed by the sanction which the Legislature has given to the annual payment of £1,000 made to Chief Justice Bowen in every Session which has taken place since his appointment, as well since as *before* the passing of the Act referred to."

Three Sessions only have taken place since my appointment, *two* of these *preceded*, and *one* only has followed the passing of the Act in question, which was reserved for the Royal Assent on the last day of the Session of 1851.

No action on the part of the Legislature in Sessions, preceding its enactments can fairly be invoked, as having " removed any doubt which could have arisen as to the interpretation to be put upon the words of a Statute," whatever may be said or thought of the effect of any such action in subsequent Sessions. How far the mere fact of the Public Accounts for 1852 having been laid before Parliament, without any notice of the merely *partial* payment of my salary, having been elicited, amounts to a *Legislative interpretation* of the provisions of 14 and 15 Victoria, chapter 173. I am not called upon to inquire, inasmuch as the authority claimed for such payment in these Accounts, as well as in the Accounts for 1850 and 1851, was Schedule A of 9 Victoria, chapter 114.

The sanction of *Legislative interpretation* can hardly be invoked on so slight a ground, in support of the position that I am *entitled* to £1,000 per annum only, as Chief Justice of the Superior Court of Lower Canada, in virtue of Schedule A, 9 Victoria, chapter 114, still less can the circumstance be relied upon as affording any *interpretation* of 14 and 15 Victoria, chapter 173. Yet, strange to say, it is invoked by the Law Officers of the Crown in support of their assertion, that I am not entitled to any salary at all, under either of these Acts, but only to £1,000 per annum, " under the *Order in Council* " of the 24th December, 1849, fixing the salaries of the Judges of these " Courts," in which order it is stated, " the salary of Chief Justice Bowen to be £1,000 per annum *during the incumbency of M. Justice Rolland* (who is to receive £1,250), and on the death or resignation " of the latter Judge, the salary of the Chief Justice of the Superior " Court to be £1,250."

For these and other reasons which might readily be adduced, were it not from the fear of making this communication overlengthy, but feeling more and more strengthened in the conviction that in virtue of 9 Victoria, chapter 114, as amended by 14 and 15 Victoria, chapter 173.

I became and am legally entitled to a salary of £1,200 per annum, from the date of my appointment as Chief Justice of the Superior Court for Lower Canada; I have now to request that His Excellency the Administrator of the Government may be advised to refer the subject anew to the Law Officers of the Crown, inasmuch as in my letter of the 30th April last, my claim (which then as now, I consider undeniable,) was but briefly stated; trusting that upon a reconsideration of the matter in the light wherein it is now confidently submitted, a favorable report will yet be obtained.

I have the honor to be,

Sir,

Your most obedient servant,

EDWARD BOWEN.

The Honorable Francis Hincks,

Inspector General.

&c., &c., &c.

See the Clauses in question.

9 Victoria, chapter 114, Section 4.—“ And be it enacted, that the “ sums set down in the first column opposite to each Office or Department in the Schedules A and B shall be payable for each, while “ the *present Incumbents shall respectively remain in office*, and as “ often as any such *present Incumbent shall cease* to hold such office, “ the sums respectively mentioned in the first column *shall cease* to be “ payable, and the sums mentioned in the *second* column shall, as each “ case arrives, be payable instead, as in the Schedules mentioned.”

“ Lower Canada, extract from Schedule A. ”

“ One Chief Justice of Montreal or Quebec, as the case may be,” first column, £1,222 4s. 4d.; Second, £1,200.

14 and 15 Victoria, chapter 173. *In Lower Canada.*

“ The salary of every Chief Justice of the Court of Queen’s Bench, “ or of the Superior Court, *namcd after the day* herein last above “ mentioned, (10th August, 1850,) or who shall be named hereafter, “ shall not exceed the sum of £900, Currency, per annum; and the “ *Chief Justices of the said Courts* shall be the Functionaries whose “ *salaries shall be payable in virtue of the said Act, (a)* instead of

(a) What Act? why, the 9 Victoria, chapter 114, Schedule A, no other Act relating to the Civil List being in force at the time when this *amending Act* was framed and passed.

"the Chief Justice of Lower Canada, and of the Chief Justice of Quebec or Montreal, therein mentioned."

Every one who has looked at the Statutes must feel there is no room to doubt as to the construction and effect of the latter Statute, 14 and 15 Victoria, Chapter 173, taken in connection with the former of 9 Victoria, chapter 114.

However, it may have happened that the Legislature, in 1849, omitted to assign any salary to the Judges of the *New Courts*, Lower Canada, (as was done by them in the same year in the Acts, chapters 63 and 64, creating certain Courts in Upper Canada,) or to authorise the Executive Government to do it, there could be no doubt, that they never meant to abolish the existing Courts, and to transfer their Judges to other Courts, without *giving them an income*, and they could not have imagined that their old salaries would *adhere* to them without some provision being made after the change.

The Government necessarily stepped in to remedy the omission, till the Legislature should reassemble and make proper provision, and whether it was regular or not to interfere as they did, the order of Council was just such as it was naturel and reasonable for them to make under the circumstances.

They were quite sure the Legislature could not find fault with them for authorising the Judges in their *new Courts*, to receive the same salaries as they had been holding in those that were abolished, because the Legislature could not have intended to give them less; and the provision *forming part of the order in Council*; that "on the death or resignation of Mr. Justice Rolland, the salary of the Chief Justice of the Superior Court should be £1,250," (ought to have been said £1,200, I presume,) shewed their willingness to mark the distinction between the head of the Court and the other Judges, and to go to the full extent in putting matters on a just footing, so long as they did not assume to add to the amount which the Province had before been paying.

Then when the Legislature met again in 1850, they applied themselves for the *first time* to the subject, and the provision which they then made was reasonable and just, viz: that the Chief Justices of the Queen's Bench and of the Superior Court should thence forward be the Officers, whose salaries should be payable under 9 Victoria, instead of the Chief Justice of Lower Canada, and Chief Justice of Quebec or Montreal, therein mentioned. So, that this enactment requires that one should thereafter read "One Chief Justice of the Superior Court, instead of one Chief Justice of Montreal or Quebec,"

in the Schedule A in that Act, and must read opposite to it the same sum as before, £1,200.

What salary can the Chief Justice of the Superior Court be paid under 9 Victoria, as directed, if he is not paid £1,200? It is unquestionable that having been appointed *before* the 10th August, 1850, he is not paid the salary of £900, under 9 Victoria, as amended by 14 and 15 Victoria, chapter 173, because that scale *applies only* to those who shall receive their Commissions *after that day*, and if the £1,200 is denied to him, then this *Functionary*, whose salary is to be payable under 9 Victoria, can get *nothing* under that Act, in its original terms as amended, the effect must be, that he can get nothing *legally*, for notwithstanding the plain direction of the Statute he must get nothing or get £1,000 or £1,500 *under an Order* of Council, for *which there is no legal warrant*, and which, at any rate, never could have been intended to *continue after* the Legislature had made its provision. If the order of Council of 1849, had happened to assign to the Chief Justice of the Superior Court a salary of £2,000, would it now continue to be paid him, in face of the Statutes of 1846 and 1851, *surely not*, and if not, how can he be denied the benefit of the Statute Scale, *when it is in his favor?*

QUEBEC, 1st February, 1854.

SIR,—Having attentively considered the questions which you did me the honor to submit to me, touching the operation of the two Acts, 9 Victoria chapter 114, granting a Civil List to Her Majesty, and the 14 and 15 Victoria, chapter 173, amending it, as regards your salary as Chief Justice of the Superior Court for Lower Canada, I am of opinion that you are legally entitled to a salary at the rate of £1,200, Currency, per annum, from the 13th March, 1852, when the amending Act came into force.

The 9 Victoria chapter 114, was passed before the change in the Judicature of Lower Canada, by which the Superior Court, in which you preside, was constituted. By this Act, the salary of the Chief Justice of Quebec (or of Montreal as the case might be,) was fixed at £1,200 per annum, if the incumbent be appointed after the passing of this Act. Subsequently to this Act, but before the passing of the Act, 14 and 15 Victoria, chapter 173, amending it, the office of Chief Justice of Quebec (or Montreal) was abolished by 12 Victoria, chapter 38, and the Superior Court was established. The office of Chief Justice of the Superior Court was offered to you by the Government of the day, and there being then no legal provision as to the salary

to be attached to the office, you were informed that your salary would be One Thousand Pounds, Currency, during the incumbency of Mr. Justice Rolland, as Judge of the Court of Queen's Bench for Lower Canada, for the salary attached to which office there was also no legal provision. You accepted the offer on the terms above mentioned, expressing at the same time your trust that the Government would thereafter cause the office to be placed on the same footing as to salary as that of former Chief Justices in Lower Canada.

On the 13th March, 1852, the Act 14 and 15 Victoria, chapter 173, amending the 9 Victoria, chapter 114, came into force, and among other things, fixed the salaries of the Chief Justice and Justices of the Superior Court, touching which the former Act had not made, and could not make any provision. The salary of any Chief Justice of the Superior Court, appointed after the 10th August, 1850, is fixed at £900, Currency, per annum, and the salary of such Justice, if appointed before that day, is fixed by declaring that such Chief Justice shall be the Functionary, whose salary shall be payable under the amended Act (9 Victoria, chapter 114,) instead of the Chief Justice of Quebec or Montreal therein mentioned; and inasmuch as the amended Act fixes the salary of the Chief Justice of Quebec, (or of Montreal) appointed after the 11th October, 1847, at £1,200, this last sum must be the salary attached by the Legislature to your office from the coming into force of the amending Act. Any other construction than this, would involve the absurd conclusion that the Legislature has not fixed the salary *of any one of the Judges in Lower Canada*, appointed before the passing of the amending Act, one of the main objects of which must have been the *fixing* of these very salaries: and one of the consequences to which such construction would lead is, that the Government is now paying every Chief Justice and Judge in Lower Canada, except Mr. Justice Caron, (who alone was appointed after the amending Act came into force,) and the four Judges for whose salaries provision is made by annual grants for the contingent expenses of the administration of justice, salaries which are not authorised by law. No annual grant has, since the passing of the amending Act, been made by the Legislature, for the salaries of the Judges of the Superior Court, or of the Queen's Bench or for those of the Chief Justice of either Court. These salaries therefore are paid either without authority, or under the authority of the amending Act; and the case of all these Judges is the same as your own in this respect, for they were all appointed after the 11th October, 1847, and before the 10th August, 1850.

This appears to me to be the true legal view of the question ; nor does it seem to me that your position is affected by the correspondence between the Executive Government and yourself contained in the letters of the 24th October, 1849, from M. Secretary Leslie to you, and your answer of the 26th of the same month. There being then no legal provision on the subject, you accepted the office at the salary mentioned in the Secretary's letter, until your salary should be fixed by law ; you expressed your hope that the Government would cause it to be so fixed on a better footing ; the Government subsequently brought in the amending Act, (14 and 15 Victoria, chapter 173,) by which, in accordance with the hope you expressed, your salary has been fixed at £1,200, Currency, per annum : and as the Government would have had no power, after that Act, to pay you the £1,000 a year, if the Act had fixed your salary at £900, so neither has it any power to reduce it to £1,000, when the Act has fixed it at £1,200. In other words, the Executive Government has no dispensing power by which it can set aside the provisions of an Act of Parliament.

I have carefully considered the reasons assigned for an opinion at variance with that which I am now giving, in the report of the Attorney and Solicitor General for Lower Canada, and by the Attorney General for Upper Canada, referred to in Mr. Inspector General Hinck's letter to you of the 18th November last, and upon which a decision adverse to your claim was given by the Administrator of the Government in Council, and I am humbly of opinion that the propositions on which that decision purports to have been based are wholly untenable, and inconsistent with the interpretation which the Government itself has, as I have already shewn, put upon the Act in question in the case of every Lower Canadian Judge except yourself.

I differ from you as regards the period from which you can claim salary at the rate of £1,200 per annum. From the date of your appointment in December, 1849, to the 13th March, 1852, when the amending Act came into force, during which period there was no legal provision on the subject, I think you can only claim salary at the rate which the Executive Government had on its own responsibility fixed.

I return the papers you handed me, and I am,

Sir,

Your very obedient servant,

H. BLACK.

QUEBEC, 10th February, 1854.

SIR,—I have carefully perused the papers submitted by you to the Honorable Henry Black, and likewise the opinion of that gentleman upon the question of your salary.

I concur fully in the opinion of Mr. Black, that the law fixed your salary at the sum of £1,200 a year, but differ reluctantly and with great diffidence from him as to the period from which you are entitled to claim arrears.

The 9 Victoria, chapter 114, Section 4, regulated the salaries of the Judges under the then Judicature System, and provided for a reduction of salary to future incumbents in the office corresponding with the one you now hold. The abolition of these offices by the 12th Victoria, chapter 38, rendered inoperative for the future the provisions for judicial salaries contained in the 9 Victoria, chapter 114, Section 4. The new judicial offices were without salary attached to them. Further reduction to the salaries of Judges was deemed expedient by the Legislature, and the occasion would seem to have been opportune when fixing a salary to a new office, to carry out their views of reduction, nevertheless, the Legislature apparently impressed with the justice of treating the new judicial offices as were substituted to those abolished, as they were in fact, enacts by the 14 and 15 Victoria, chapter 173, that the provisions of the 9 Victoria, chapter 114, shall apply to the newly created judicial offices, and that the reduction in salary provided for by that Act shall affect incumbents named after the 10th August, 1850, *only*. The effect of this is, in my opinion, retroactive to the period of *creating the office*. And I am therefore of opinion that your claim to arrears dates back to the period of your appointment.

I have the honor to be,

Sir,

Your obedient servant,

A. STUART.

The Honorable Chief Justice Bowen.

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